

Appl. No. 09/706,294  
Amdt. dated January 19, 2003  
Reply to Final Office Action of November 21, 2003

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## Remarks

Claims 1, 2, 4-7, 10, 11, 14-16, 19, 20, 23-25, 28 and 29 are pending in the instant application. In the Final Office Action mailed November 21, 2003, the Examiner rejects claims 1, 2, 4-7, 10, 11, 14-16, 19, 20, 23-25, 28 and 29 and objects to claims 16, 19, 25 and 28. By virtue of the amendments made above, claims 7, 11, 16, 19, 20, 25, 28 and 29 are amended. The amendments to the claims are supported by page 19, lines 24-25; page 22, lines 18-19; and other portions of the Specification as filed. Based on the amendments and remarks made herein, Applicants respectfully request that the objection and rejections be withdrawn and that the application be passed to allowance.

### 1. Objection of Claims 16, 19, 25 and 28

In the Final Office Action mailed November 21, 2003, the Examiner objects claims 16, 19, 25 and 28 "because of the following informalities: the side panels are disclosed, when previously front and back panels were disclosed." This objection is respectfully traversed as it may apply to the presently presented claims.

Applicants believe that the Examiner's concern has been addressed by the amendments made to claim 16, 19, 25 and 28. Specifically, the reference to "the side panels" has been replaced with "the pair of opposed back panels and the pair of opposed front panels" or "the front panel." Based on the foregoing, Applicants respectfully request that the objection be withdrawn.

### 2. Rejection of Claims 1, 2, 4-7, 10, 11, 23-25, 28 and 29 under 35 U.S.C. § 102(e)

In the Final Office Action mailed November 21, 2003, the Examiner rejects claims 1, 2, 4-7, 10, 11, 23-25, 28, and 29 under 35 U.S.C. §102(e) as being unpatentable over U.S. Patent No. 6,447,497 issued to Olson (hereinafter "the Olson patent"). This rejection is respectfully traversed.

Claims 1, 2, 4-7, 10, and 11 stand rejected under 35 U.S.C. §102(e) as being anticipated by the Olson patent. However, the Olson patent is not a proper 102(e) reference when compared to the effective filing date of the rejected claims 1, 2, 4-7, 10, and 11 of the present application.

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MPEP 706.02 states:

The effective filing date of a U.S. application may be determined as follows:

(B) If the application is a continuation-in-part of an earlier U.S. application >or international application<, any claims in the new application not supported by the specification and claims of the parent application have an effective filing date equal to the filing date of the new application. Any claims which are fully supported under 35 U.S.C. 112 by the earlier parent application have the effective filing date of that earlier parent application.

Claims 1, 2, 4-7, 10, and 11, being fully supported under 35 U.S.C. 112 by the parent application, have the effective filing date the parent application, U.S. Patent Application 09/216,545, filed December 18, 1998 which predates the Olson patent, having a 102(e) date of November 22, 1999. Support for each claim/ claim element is as follows; references contained in ( ) refer to a location where support can be found in the specification as filed for parent Patent Application Serial No. 09/216,545 filed on December 18, 1998, unless otherwise stated.

Claim 1: A pant-like, refastenable, disposable absorbent article which defines a front waist region, a back waist region, a crotch region which extends between and connects the waist regions, a longitudinal direction and a lateral direction, the absorbent article comprising: (claim 1)

a) an absorbent chassis, that includes a pair of laterally opposed side edges and a pair of longitudinally opposed waist edges; (claim 1)

b) a pair of opposed side panels that extend outward from the back waist region, wherein each of the opposed side panels defines a first side margin, the first side margins are permanently attached to the side edges of the absorbent chassis in the back waist region to provide a permanent joint, and a second side margin, the second side margins are releasably attached to the side edges of the absorbent chassis in the front waist region to provide a releasable joint; and (claim 1; page 16, lines 8 – 18)

c) a fastener permanently attached to the second side margin of each of the side panels, wherein the releasable joint is provided by the fastener and one or more releasable bonds, wherein

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the one or more releasable bonds are adhesive, thermal, cohesive, ultrasonic, or any other bond which becomes destroyed upon first disengagement. (page 25, lines 22 – 30; page 7, lines 20 – 28; page 19, lines 11 – 20; and Col. 16, lines 54 – 57 of U.S. Patent Application 09/100,574, incorporate by reference on page 18, lines 16 – 19)

Claim 2: (claim 2)

Claim 4: (claim 4)

Claim 5: (claim 5)

Claim 6: (claim 6)

Claim 7: The absorbent article of claim 1 wherein the side panels are stretchable at least in the lateral direction. (page 14, line 33 – page 15, line 16)

Claim 10: The absorbent article of claim 1 and further defining an article centerline in the longitudinal direction wherein each of the fasteners includes a fastener ear that is attached to the second side margin of the side panel and extends inwardly toward the article centerline when in a prefastered configuration. (page 14, lines 16 – 31; Figure 2; page 16, lines 20 – 30)

Claim 11: The absorbent article of claim 10 wherein the fastener ears are stretchable at least in the lateral direction. (page 14, line 33 – page 15, line 16)

For at least the reasons presented herein, the subject matter of claims 1, 2, 4-7, 10, and 11, being fully supported by the parent application, have the effective filing date of the parent application, and therefore the Olson patent is not available under 102(e).

Claims 23 – 25, 28 and 29 also stand rejected under 35 U.S.C. §102(e) as being anticipated by the Olson patent. In order to be anticipatory, a reference must explicitly or implicitly disclose each and every element of the claimed invention.

With respect to claim 23, the Examiner believes the Olson patent discloses a pair of opposed front panels which are permanently attached to the side edges of the absorbent chassis in the front region. The Examiner also believes the Olson patent discloses the front panels and back panels are releasable connected together along a side seam to provide a releasable joint. With respect to claim 24, the Examiner believes the Olson patent discloses the absorbent chassis comprising an outer cover, a bodyside liner and an absorbent core disposed there between. With respect to claim 25, the Examiner believes the Olson patent discloses the panels are extensible in the lateral direction. With respect to claim 28, the Examiner believes the Olson patent discloses the fasteners attached to the second side margin of the side panel and extend inwardly toward the

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article centerline. With respect to claim 29 the examiner believes the Olson patent discloses the fastener ears are capable of being stretched, or extended, in at least the lateral direction.

Independent claim 23 of the present is directed to a pant-like, refastenable, disposable absorbent article that defines a front waist region, a back waist region, a crotch region which extends between and connects the waist regions, a longitudinal direction and a lateral direction. The claimed absorbent article also includes an absorbent chassis that includes a pair of laterally opposed side edges and a pair of longitudinally opposed waist edges. The claimed absorbent article also includes a pair of opposed back panels which are permanently attached to the side edges of the absorbent chassis in the back waist region. The claimed absorbent article also includes a pair of opposed front panels which are permanently attached to the side edges of the absorbent chassis in the front waist region. The front panel and the back panel are releasably connected together along a side seam to provide a releasable joint. The claimed absorbent article further includes a fastener permanently attached to each of the back panels adjacent the side seams and configured to refastenably engage one of the front panels. Upon disengagement of the releasable joints, the fasteners are also configured to engage an exterior surface of the absorbent chassis in the front waist region. The releasable joint is provided by the fastener and one or more releasable bonds, wherein the one or more releasable bonds are adhesive, thermal, cohesive, ultrasonic, or any other bond which becomes destroyed upon first disengagement.

The Olson patent does not disclose (either explicitly or implicitly) each and every element of the claimed invention. For example, the Olson patent does not disclose a fastener permanently attached to each of the back panels adjacent the side seams and configured to refastenably engage one of the front panels and upon disengagement of the releasable joints, the fasteners are also configured to engage an exterior surface of the absorbent chassis in the front waist region. The Examiner has not stated a belief that the Olson patent discloses this element nor has the Examiner indicated a location in the Olson patent where this element has been disclosed. Applicants respectfully submit that independent claim 23 is patentable over the Olson patent. Moreover, claims 24, 25, 28 and 29, which depend from the above independent claim, are also accordingly patentable over the Olson patent.

### **3. Rejection of Claims 14-16, 19 and 20 under 35 U.S.C. §103(a)**

In the Final Office Action mailed November 21, 2003 the Examiner rejects claims 14-16, 19 and 20 under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 5,605,735 issued to Zehner et al. (hereinafter "the Zehner patent") in view of U.S. Patent No. 6,287,287 issued to

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Elsberg (hereinafter "the Elsberg patent"). This rejection is respectfully **traversed**. Applicants respectfully submit that the rejection is improper in view of MPEP 706.02(I)(1).

MPEP 706.02(I)(1) is directed to "Rejections Under 35 U.S.C. 102(e)/103". The section states that "...subject matter which was prior art under former 35 U.S.C. 103 via 35 U.S.C. 102(e) is now disqualified as prior art against the claimed invention if that subject matter and the claimed invention 'were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.'" This section applies to all applications filed on or after November 29, 1999, including continuing application filed under 37 CFR 1.53(b). This section continues and states "[t]he mere filing of a continuing application on after November 29, 1999, with the required evidence of common ownership, will serve to exclude commonly owned 35 U.S.C. 102(e) prior art that was applied, or could have been applied, in a rejection under 35 U.S.C. 103 in the parent application." The below-signed attorney of record hereby makes a statement evidencing common ownership in accordance with MPEP §706.02(I)(2) regarding the Elsberg patent and the present application.

#### **STATEMENT OF COMMON OWNERSHIP**

Application Serial No. 09/706,294 and U.S. Patent No. 6,287,287 were, at the time the invention of Application Serial No. 09/706,298 was made, owned by Kimberly-Clark Worldwide, Inc.

In addition, the present application claims priority, by way of a Continuation-In-Part to Application Serial No. 09/216,545. Application Serial No. 09/216,545 and U.S. Patent No. 6,287,287 were, at the time the invention of Application Serial No. 09/216,545 was made, owned by Kimberly-Clark Worldwide, Inc.

MPEP §706.02(I)(2) states "This statement alone is sufficient evidence to disqualify Patent A from being used in a rejection under 35 U.S.C. 103(a) against the claims of Application X." Applicants respectfully request that the Examiner withdraw the rejection under §103(a) based on the Elsberg patent.

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In view of the above amendments and remarks, reconsideration and withdrawal of the rejections of claims 1, 2, 4-7, 10, 11, 14-16, 19, 20, 23-25, 28 and 29 under 35 U.S.C. §102 and §103 are respectfully requested. Moreover, it is respectfully submitted that all of the presently presented claims are in form for allowance and such action is earnestly solicited.

Please charge any prosecutorial fees which are due to Kimberly-Clark Worldwide, Inc. deposit account number 11-0875.

The undersigned may be reached at: 920-721-4558.

Respectfully submitted,

JENNIFER E. POZNIAK ET AL.

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#### CERTIFICATE OF FACSIMILE

I, Barbara D. Miller, hereby certify that on January 19, 2004, this document is being facsimile transmitted to the Commissioner for Patents, Alexandria, VA 22313-1450 to facsimile number 703-872-9306.

By: Barbara D. Miller  
Barbara D. Miller